

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

**1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Carroll County, Maryland

Respondent.

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. CWA-03-2014-0082DN

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

II. FINDINGS of FACT and CONCLUSIONS OF LAW

3. Carroll County, Maryland, or "Respondent", is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

5. Respondent's MS4 is located within the geographic boundaries of Carroll County.
6. Carroll County (the County) encompasses a total area of approximately 289,536 acres. According to the County, its population is estimated at 167,929 people.
7. Stormwater from the County drains to a number of water bodies, including the Upper Monocacy River, Lower Monocacy River, Conewago Creek, Double Pipe Creek and the North and South Branches of the Patapsco River, in addition to numerous small tributary creeks and streams, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
10. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
11. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
12. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
13. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

14. Respondent's MS4 serves a population of at least 100,000 people.
15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.
16. MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068331 which became effective on July 14, 2005 (hereinafter the "MS4 Permit").
17. The expiration date of the MS4 Permit was July 14, 2010; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.
18. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.
19. On December 1, 2002 MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities ("Industrial SW Permit"). The permit also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.
20. On April 26 & 27, 2012 representatives of EPA conducted an inspection of Carroll County's MS4 program implementation.
21. In May 2013, EPA issued the Carroll County Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the County's MS4 program and history, eighteen (18) observations regarding the County's MS4 Program related to the requirements of the current MS4 Permit (MD 0068331, effective July 14, 2005). The Inspection Report also included 8 attachments (exhibit log, photo log, document log, etc.).
22. The County received a copy of the Inspection Report which was sent by mail on May 20, 2013. The County prepared and submitted a response to EPA on July 3, 2013.
23. Based upon the April 26 & 27, 2012 inspection, EPA identified eight categories of violations, among the seventeen (17) observations, which it had concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This Consent Order addresses these categories and directs the County to take the corrective action described below to comply with its current MS4 Permit (MD 0068331, effective July 14, 2005).
24. Part III.C. of the MS4 permit requires "Sources of pollutants in stormwater runoff

shall be identified and linked to specific water quality impacts on a watershed basis. This process shall be used to develop watershed restoration plans that effectively improve water quality. The following information shall be submitted in geographical information system (GIS) format with associated tables as required in Part IV. of this permit: storm drain system: major outfalls, inlets and associated drainage areas;"

25. At the time of the MS4 inspection, seven years after the permit issuance, Carroll County had still not completed mapping all of its major outfalls.

26. Part III.E.2 of the MS4 permit requires the County to maintain an acceptable erosion and sediment control program in accordance with Environment Article, Title 4, Subtitle 1 of the Annotated Code of Maryland. Title 4, Subtitle 1 requires that construction sites be inspected on average once every two weeks. This requirement is also written in Section 7.1 of the Maryland Model Erosion and Sediment Control Ordinance (MDE 2/2012) "Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on average once every two (2) weeks."

27. At the Antrim Mini-Storage site, compliance inspections occurred on January 14, 2009, February 20, 2009 and April 1, 2009. The periods between these inspections were between 26 and 46 days, well beyond the two week average.

28. Part III.E.3 of the MS4 permit requires "Carroll County maintain an inspection and enforcement program or other alternative methods approved by MDE, to ensure that all discharges to and from the municipal separate storm sewer that are not composed entirely of stormwater are either permitted by MDE or eliminated."

29. At the time of the MS4 inspection, Carroll County's dry weather inspections were not adequately investigating for illicit discharges by failing to examine inflow points into stormwater management structures (SWMs) for the presence of dry weather flows.

30. Part III.E.6.a of the MS4 permit requires Carroll County "Continue to publicize a compliance hotline for the reporting of suspected illicit discharges, illegal dumping and spills."

31. At the time of the MS4 inspection, Carroll County still had not developed an outreach program to inform citizens about illegal dumping and spills, or the method to report illegal dumping and spills.

32. Part III.E.4 of the MS4 permit requires Carroll County to "... identify all County-owned facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plans development and implementation shall be submitted annually."

33. At the time of the MS4 inspection, Carroll County had not developed Stormwater

Pollution Prevention Plans (SWPPPs) for two closed landfills.

34. Part III.E.4 of the MS4 permit requires Carroll County to "... identify all County-owned facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plans development and implementation shall be submitted annually." Part IV.C.2.f of the general permit requires qualified plant personnel be identified to visually inspect designated equipment and plant areas. A site inspection shall be conducted annually by such personnel to verify that the description of potential pollutant sources as required in the permit is accurate.

35. At the time of the MS4 inspection, annual stormwater inspections were not documented for the Northern Landfill.

36. Based upon the MS4 inspection, EPA has concluded that Respondent's failures to: 1) identify and map all stormwater outfalls; 2) develop and implement procedures to inspect construction sites on a bi-weekly basis and insure compliance with the E&S plans; 3) ensure that all County facilities are properly permitted and inspected for compliance with their SWPPPs; and 4) develop a hotline for residents to call in illicit discharges; violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this 3rd day of April, 2014, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

37. Respondent shall take all actions necessary to comply with its MS4 Permit, including:

- a. Continue to add major outfalls as new structures are constructed or as unknown outfalls may be discovered through periodic watershed assessments and stream walks, until such time as a new MS4 permit is issued, and adhere to those permit conditions. Submit your plan and schedule for watershed assessments and stream walks to EPA within the effective date of this Order on Consent;
- b. Continue to use the Carroll County revised form "SWM Pond & Infiltration Maintenance Form" to screen inflow points and outfall points during tri annual inspections and/or dry weather screenings;
- c. Develop and implement a plan within 6 months of the effective date of this Order to inspect all active construction sites with E&S controls on bi-weekly basis and to pursue enforcement on active construction sites based upon set criteria. Submit

this plan to EPA for comment;

- d. Submit and certify a record confirming up to date SWPPs and current inspections for all applicable County facilities permitted for industrial stormwater within the effective date of this Order on Consent.

38. All documents required by Paragraph 37 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
Title _____

All documents required herein shall be submitted to:

Peter Gold
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

39. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has

jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

40. This Order does not constitute a waiver or modification of the terms or conditions of the County's MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

41. For the purposes of this proceeding, the County neither admits nor denies the factual allegations and conclusions of law set forth in this Order.

42. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

43. By entering into this Order, the County does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 4/3/14

Jon Capacasa
Jon Capacasa
Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

Date: 7 March 2014

For Carroll County:

Shirley R. Rell
Name

Chief of Staff
Title

REVIEWED BY: [Signature]
COUNTY ATTORNEY'S OFFICE FOR
CARROLL COUNTY
DATE 3-6-14

